

1 ROBERT S. MUELLER, III (CSBN 59775)
2 United States Attorney

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ROBERT POCSIK,

16
17 Defendant.

No.

VIOLATION: 18 U.S.C. § 371- Conspiracy
to Commit Securities Fraud

SAN FRANCISCO VENUE

18
19 **INFORMATION**

20 The United States Attorney charges:

21 **BACKGROUND:**

22 At all times relevant to this Information:

23 1. Indus International, Inc. ("Indus") was a Delaware corporation with its headquarters in
24 San Francisco, California. Indus was a provider of "Enterprise Asset Management" products and
25 services, including computer software.

26 2. Indus was a publicly owned corporation. Its stock was registered with the National
27 Association of Securities Dealers' Automated Quotation System ("NASDAQ") and traded under
28 the symbol "IINT." Indus had shareholders throughout the United States, including in the

1 Northern District of California.

2 3. The defendant ROBERT POCSIK was employed by Indus International, Inc. as the
3 Senior Vice President of Human Resources, Chief Administrative Officer, and acting head of
4 Sales from approximately April 1999 to approximately January 2000.

5 4. Indus' third financial quarter of 1999 ended on September 30, 1999. On or about
6 September 30, 1999, Indus entered into a software licensing and service agreement with Holmes
7 and Narver ("H&N"). Under the terms of the agreement, H&N agreed to purchase a license to
8 use certain Indus computer software for \$1,718,650 and to pay support fees in the amount of
9 \$309,357. The agreement did not contain any contingencies. Indus sent the software to H&N.

10 5. At the direction of Indus President and Chief Executive Officer William Grabske,
11 POCSIK caused a letter to be sent to H&N on or about September 29, 1999, which gave H&N
12 the right to cancel the contract and return the software to Indus without any cost or penalty before
13 October 20, 1999. This letter was concealed from Indus' Chief Financial Officer ("CFO") and
14 the company's internal accountants.

15 6. At the direction of Grabske, on or about October 25, 1999, POCSIK directed another
16 Indus employee to enter into an addendum to the software licensing and service agreement. The
17 addendum extended H&N's cancellation option to October 31, 1999. This addendum was
18 concealed from Indus' CFO and the company's internal accountants.

19 7. On or about November 1, 1999, H&N cancelled the software licensing and service
20 agreement and returned the software to Indus employee Ralph Widmaier.

21 8. POCSIK directed Widmaier to send two bottles of wine to H&N by Federal Express
22 and to use the Federal Express shipping receipt as proof that software had been sent by Indus to
23 H&N. On or about November 16, 1999, Widmaier sent the wine as directed.

24 9. On or about November 19, 1999, at Grabske's direction, POCSIK sent another letter
25 to H&N extending the contract termination date to January 31, 2000. This letter was concealed
26 from Indus' CFO and the company's internal accountants.

27 10. The software described in the September 30, 1999, software license and service
28 agreement was never returned to H&N and H&N never paid Indus any money under the

1 agreement. Under generally accepted accounting principles and Indus' internal system of
2 accounting, revenue from the H&N contract could not be recognized on Indus' books. Indus
3 improperly recorded \$1,718,650 in revenue from the H&N contract for the quarter ending
4 September 30, 1999. This revenue was reported by the company to the SEC and the investing
5 public.

6 11. On or about October 28, 1999, Indus issued a press release announcing its financial
7 results for the third quarter of 1999, which included the revenue for the H&N transaction. The
8 press release reported revenues of \$50.9 million, software licensing fees of \$9.9 million, and net
9 income of \$3.4 million.

10 12. On or about November 15, 1999, Indus filed its SEC Form 10-Q the quarter ending
11 September 30, 1999. The Form 10-Q contained several statements that defendant POCSIK knew
12 were false, including software license fees (\$9.935 million), the total revenues (\$50.88 million),
13 and the net income (\$3.52 million) were false because they included the H&N revenue. The 10-
14 Q also falsely stated that the financial information was calculated "in accordance with generally
15 accepted accounting principles." The 10-Q refers to accounting rule SOP 97-2 and represents
16 that "[m]anagement believes that the Company's current policy and its practices conform to the
17 rules" set forth in SOP 97-2. Defendant POCSIK knew that the company had not followed either
18 generally accepted accounting principles or SOP 97-2 when it recognized revenue from the H&N
19 transaction.

20 COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Commit Securities Fraud)

21 13. Paragraphs One through Twelve of this Information are realleged and incorporated
22 here by reference.

23 14. From in or about at least September 30, 1999, to January 11, 2000, both dates being
24 approximate and inclusive, within the Northern District of California and elsewhere, the
25 defendant

26 ROBERT POCSIK

27 and others, did knowingly and willfully conspire to commit offenses against the United States,
28 including: (a) fraud in connection with the offer and sale, and the purchase and sale, of

1 securities, in violation of 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5; (b) making
2 and causing to be made false and misleading statements of material fact in reports and documents
3 required to be filed under the Securities Act of 1934 and the rules and regulations thereunder, in
4 violation of 15 U.S.C. §§ 78j(b), 78m(a)(2), and 78ff, and 17 C.F.R. §§ 240.10b-5 and 240.13a-
5 13; (c) making and causing to be made falsified books, records, and accounts, in violation of 15
6 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5) and 78ff, and 17 C.F.R. § 240.13b2-1; (d) violating and
7 causing to be violated the internal accounting procedures and systems of accounting controls of a
8 public company, in violation of 15 U.S.C. §§ 78m(b)(2)(B)(ii)(I) and 78ff; (e) making and
9 causing to be made false statements to the Securities and Exchange Commission, in violation of
10 18 U.S.C. § 1001; and (f) mail and wire fraud, in violation of 18 U.S.C. §§ 1341, 1343, and
11 1346.

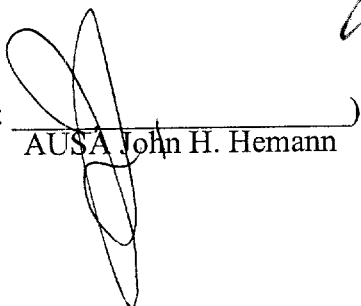
12 15. In furtherance of the conspiracy and to effect the objects thereof, the defendant and
13 others committed overt acts in the Northern District of California and elsewhere, including those
14 alleged in paragraphs Four through Twelve of this Information.

15 All in violation of Title 18, United States Code, Section 371.

16
17 ROBERT S. MUELLER, III
18 United States Attorney

19 DATED: 8/29/01

20 
21 DAVID W. SHAPIRO
22 Chief, Criminal Division

23 (Approved as to form: )

24 AUSA John H. Hemann
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